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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - x  
In re: : Chapter 11  
:  
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
et al., :  
:  
Debtors. : Jointly Administered  
- - - - - x

**DEBTORS' MOTION FOR ORDER PURSUANT TO BANKRUPTCY CODE  
SECTIONS 105 AND 363 (I) AUTHORIZING DEBTORS TO ENTER INTO  
AN AGREEMENT IN CONNECTION WITH SALE OF FURNITURE, FIXTURES  
AND EQUIPMENT, SUBJECT TO HIGHER OR OTHERWISE BETTER  
PROPOSALS; (II) APPROVING SALE OF FURNITURE, FIXTURES AND  
EQUIPMENT FREE AND CLEAR OF ALL INTERESTS; AND  
(III) GRANTING RELATED RELIEF**

The debtors and debtors in possession in the  
above-captioned jointly administered cases (collectively,

the "Debtors")<sup>1</sup> hereby move (the "Motion"), pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order (I) authorizing the Debtors to enter into an agreement (the "FF&E Agreement") with the FF&E Agent (as defined herein) on the terms described in the proposal attached to the order as Exhibit A (the "Proposal") to serve as agent for the sale (the "Sale") of the Debtors furnishings, trade fixtures and equipment (collectively, the "FF&E"), subject to higher or otherwise better proposals; (II) approving the Sale of the FF&E free and clear of all interests; and (III) granting related relief. In support of the Motion, the Debtors respectfully

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), PRAHS, INC. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

represent as follows:

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105 and 363 and Bankruptcy Rule 6004.

#### **BACKGROUND**

3. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no

trustee or examiner has been appointed in these chapter 11 cases.

6. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors remaining stores.

#### **RELIEF REQUESTED**

7. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto (the "Order"), (I) authorizing the Debtors to enter into the FF&E Agreement with the FF&E Agent in connection with the Sale of the FF&E, subject to higher or otherwise better proposals; (II) approving the Sale of the FF&E pursuant to the FF&E Agreement with the FF&E Agent free and clear of all interests; and (III) granting related relief.

## **BASIS FOR RELIEF**

### **A. The Debtors' Marketing Efforts.**

8. Since commencing the going out of business sales at their remaining stores, the Debtors have been focusing their efforts of maximizing the value of their remaining assets and minimizing expenses. In particular, the Debtors have identified various locations at which FF&E is located. The locations were used as distribution, call, and service centers located throughout the United States,<sup>2</sup> in addition to the Debtors' corporate headquarters in Richmond, Virginia (collectively, the "Locations").

9. At this time, the Debtors have ceased a most and are in the process of winding down their remaining operations at the Locations. To that end, the Debtors have determined that a sale of their FF&E located therein is in the best interests of their estates.

10. To facilitate a sale of their FF&E, the Debtors contacted various national liquidation firms and

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<sup>2</sup> A list of distribution, call, and service centers is attached to the order as Exhibit B.

other parties that specialize in liquidating these types of assets. For those parties that executed appropriate confidentiality agreements, the Debtors provided such parties with due diligence materials and arranged onsite visits to the Locations. The Debtors also advised these parties that bids to serve as an agent to conduct the sale of FF&E (on a fee or equity basis) were due on or before February 4, 2009.

11. As a result of these marketing efforts, the Debtors received various proposals to serve as the FF&E agent for the Sale of the FF&E. Upon reviewing these proposals, the Debtors determined that the proposal submitted by the FF&E Agent was the highest or otherwise best proposal of those received. Thus, the Debtors elected to proceed with the Sale of the FF&E pursuant to the FF&E Agreement with the FF&E Agent.

**B. The Proposal And The FF&E Agreement.**

12. As reflected in the Proposal, the FF&E Agreement will provide that Liquid Asset Partners, LLC (the "FF&E Agent") will serve as the Debtors' agent for the sale of FF&E.

13. To facilitate the sale, the FF&E Agent has agreed to: (1) deploy a team of veteran liquidators experienced in the liquidation of warehouse and office equipment; (2) conduct a comprehensive marketing effort, including local regional and international newspaper insertions, nationwide internet announcements, trade listings, web and Internet notifications, email notices, and direct telephone solicitations; and (3) handle all marketing, overseeing personnel and operational efforts, onsite liquidation execution and support services, and property removal and building clean-up supervision; provide detailed financial accounting and support documentation. As part of its marketing efforts, the FF&E Agent will utilize a direct buyer list of over 1000 warehouse equipment dealers, over 300 conveyor and automation dealers and over 15,000 equipment end users.

14. The Agreement proposes two similar compensation structures. However, the Debtors have elected to proceed under the second compensation structure. Under the second compensation structure, the FF&E Agent would receive a commission equal to 2 percent of the net proceeds of the sale. The FF&E Agent would

also charge a buyers' premium (generally equal to 10 percent) and retain such premium. The buyers' premium would then not be treated as part of the gross proceeds from the sale subject to the 2 percent commission.

Under this structure, the FF&E Agent would deduct from the sale proceeds (subject to certain caps) direct sale related expenses, including expenses for marketing and advertising, accounting, labor and personnel and travel expenses. Thus, the Debtors would not pay any sale expenses up front. However, all occupancy and related costs and expenses would remain the responsibility of the Debtors during the sale period.

15. The Debtors believe that the FF&E Agent is ably qualified to perform the services described above. As noted in the Proposal, during the past five year, the FF&E Agent has consulted on or purchased equipment assets for liquidation, which generated over \$100 million in sales. Some of these transactions include Penn Traffic's two Distribution Centers in Columbus, Ohio (1 million Sq Ft.), Kmart's world corporate office (1 million Sq Ft.) and warehouse in Detroit, Michigan, 33 Office Max distribution centers,



Bugle Boys distribution center in Atlanta, Georgia (600,000 Sq Ft.), Amazing Savings distribution center in New Jersey, Franks Nursery distribution center in Indianapolis, Indiana, over 300 Builders Square Warehouse stores (120,000 Sq Ft. each), over 10,000 retail stores, and numerous other corporate offices and distribution centers.

**C. The FF&E Agreement Is Subject To Higher And Otherwise Better Proposals.**

16. To ensure the Debtors receive the highest or otherwise best proposal for the sale of the FF&E, the Debtors will entertain alternate proposals therefor. Thus, any party, including those parties that previously submitted proposals, who wishes to submit an alternate proposal for consideration by the Debtors should do so by February 12, 2009 at 4:00 p.m. (ET). If the Debtors receive any such proposals, the Debtors will hold auction on February 16, 2009. Upon receipt of any alternate proposal, the Debtors will advise the FF&E Agent and any and all other parties that submitted alternate proposals of the time and place (or telephonic instructions) for an auction.

17. Following an auction, if any, the Debtors will proceed with a hearing to approve the relief requested herein on February 17, 2009 at 10:00 a.m. (ET) (the "Hearing").

**APPLICABLE AUTHORITY**

**I. APPROVAL OF THE SALE OF FF&E IS WARRANTED UNDER BANKRUPTCY CODE SECTIONS 105(A) AND 363(B)(1).**

18. Bankruptcy Code section 363(b)(1) authorizes a trustee to "use, sell, or lease" property of the estate with the Court's approval. 11 U.S.C. § 363(b)(1). Assets of the Debtors may be sold outside of the ordinary course of business, pursuant to Bankruptcy Code section 363(b)(1), if a sound business purpose exists for doing so. In re WBQ P'ship, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)(citing Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986)); see also In re W.A. Mallory Co., Inc., 214 B.R. 834, 836 (Bankr. E.D. Va. 1997).

19. To satisfy the "sound business purpose test," the debtor must demonstrate that (1) a sound business reason or emergency justifies a pre-confirmation sale; (2) the sale was proposed in good

faith; (3) the purchase price is fair and reasonable; and (4) adequate and reasonable notice of the sale has been provided. In re WBQ P'ship, 189 B.R. at 102.

20. Here, a sound business purpose exists. The Debtors recently announced and commenced going out of business sales at their remaining stores. Through these sales the Debtors are liquidating their inventory. As part of their ongoing liquidation efforts, the Debtors have determined that the Locations are no longer necessary to their operations. Thus, the Debtors believe that liquidating the FF&E at the Locations will maximize value and limit administrative expenses associated with any lease or other obligations at the Locations. Maximizing value and limiting administrative expenses are sound business purposes that support approval of the sale.

21. As reflected in the Proposal, the FF&E Agent has both extensive experience in liquidating FF&E and an extensive list of direct buyers. Moreover, based on evaluation of competing proposals, the Debtors' management and the Debtors' advisors have concluded that the fee based compensation structure under the FF&E

Agreement is not only reasonable, but represents the highest and otherwise best offer.

22. The sale of the FF&E pursuant to the FF&E Agreement will be subject to competing bids, thereby enhancing the Debtors' ability to receive the highest or otherwise best value for their assets. Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid to an Agent for liquidating the FF&E.

23. Finally, timely and adequate notice will be provided to the Debtors' major creditor constituencies, those parties most interested in these cases, those parties potentially interested in bidding to serve as FF&E Agent and others whose interests are potentially implicated by the proposed sale thereof.

24. In light of the foregoing, sale of the FF&E pursuant to an FF&E Agreement with the FF&E Agent is warranted under Bankruptcy Code section 363.

**II. THE SALE PROCESS IS REASONABLE AND APPROPRIATE.**

25. As noted above, Bankruptcy Code section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Moreover, Bankruptcy Code section 105(a) provides that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

26. The Sale of the FF&E pursuant to the terms reflected in the in the Proposal results from the bids submitted for the opportunity to liquidate the Debtors' FF&E. The marketing process conducted by the Debtors' advisors represents an accepted method of selling the right to liquidate FF&E and, similarly, the processes under the FF&E Agreement represent an accepted method of selling FF&E. Similar marketing processes have been approved in other chapter 11 cases. See, e.g., In re KB Toys, Inc., Case No. 08-13269 (KJC) (Bankr. D. Del. January 14, 2009); In re WPRV-TV, Inc., 143 B.R. 315, 319 (D.P.R. 1991); In re Canyon Partnership, 55 B.R.

520, 524 (Bankr. S.D. Cal. 1985); In re Ancor Exploration Co., 30 B.R. 808 (Bankr. N.D. Okla. 1983).

Moreover, other parties interested in bidding are provided with an opportunity to submit a higher or otherwise better proposal and, if necessary, the Debtors will conduct an auction.

**III. THE SALE OF FF&E SHOULD BE FREE AND CLEAR OF CLAIMS, LIENS AND ENCUMBRANCES UNDER BANKRUPTCY CODE SECTION 363(f).**

27. In the event the Court determines there is a sound business justification for a transaction, the Court may, pursuant to Bankruptcy Code section 363(f), authorize the sale of the assets free and clear of any interest. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any interest in such property if, among other things:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute;  
or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

28. Section 363(f) permits the sale of estate property free and clear of interests if any one of the five conditions above is met. See, e.g., In re Laines, 352 B.R. 410, 414-15 (Bankr. E.D. Va. 2005).

29. Courts have held that the authority of a debtor to sell assets free and clear of interests is broad and should be read expansively. See In re TWA, Inc., 322 F.3d 283, 289 (3d Cir. 2003); see also United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.), 99 F.3d 573, 582 (4th Cir. 1996) (holding that the phrase "any interest in property" includes more than just in rem interests); In re P.K.R. Convalescent Centers, Inc., 189 B.R. 90, 94 (Bankr. E.D. Va. 1995) ("As the plain meaning of the statute demonstrates, § 363 covers more situations than just sales involving liens."). Moreover, courts have noted that the purpose of the "free and clear" language is to allow the debtor to obtain a

maximum recovery on its assets in the marketplace. See In re TWA, Inc., 2001 Bankr. LEXIS 723, at \*8-\*10 (Bankr. D. Del. Mar. 27, 2001).

30. As set forth above, the Debtors have a sound business justification for selling the FF&E. Indeed, allowing the Debtors to sell FF&E through appointment of an agent that specializes in such sales provides the most efficient and cost-effective means of maximizing the value of the FF&E and, thus, is in the best interests of the Debtors' estates.

31. Additionally, the Debtors believe that the notice procedures set forth herein satisfy the requirements of Bankruptcy Code section 363(f). If a holder of a lien or other encumbrance receives the requisite notice and does not object, such holder will be deemed to have consented to the proposed sale and the property then may be sold free and clear of such holder's lien or other encumbrance, with such lien and encumbrance to attach to the cash proceeds of the sale in the order of their priority, with the same validity, force, and effect which they had as against the FF&E immediately before such transfer, subject to any claims



and defenses the Debtors may possess with respect thereto.

32. In summary, sale of the FF&E through the FF&E Agent will minimize administrative costs in these cases and speed the liquidation of FF&E.

**IV. THE COURT SHOULD INVALIDATE ANY RESTRICTIONS IN RESTRICTIVE DOCUMENTS THAT MAY IMPAIR THE DEBTORS' ABILITY TO CONDUCT THE SALE OF FF&E.**

33. In addition, the Sale should be free from various restrictions that would impair the sale of FF&E. The Locations are located on properties that are owned and leased by the Debtors. Thus, the Sale may be inconsistent with certain provisions of such leases or other documents (the "Restrictive Documents") with respect to any of such leased premises (the "Premises") that are intended to protect the image of the Location or avoid disruption of normal commerce, including provisions purporting to restrict or prohibit the Debtors from conducting liquidation or similar sales (the "Anti-Alienation Provisions").

34. Liquidation sales, such as the Sale described herein, are a routine part of chapter 11 cases involving retail debtors. Such sales are consistently

approved by courts, despite provisions of recorded documents or agreements purporting to forbid such sales in the ordinary course of business. Indeed, Anti-Alienation Provisions in leases have been deemed unenforceable in other chapter 11 cases as impermissible restraints on a debtor's ability to maximize the value of its assets under Bankruptcy Code section 363. See In re R.H. Macy & Co., 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); In re Ames Dep't Stores, Inc., 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (finding that "to enforce the anti-GOB sale clause of the [l]ease would contravene overriding federal policy requiring Debtors to maximize estate assets by imposing additional constraints never envisioned by Congress"); see also In re Tobago Bay Trading Co., 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (finding anti-going-out-of-business sales clause in lease unenforceable); In re Lisbon Shops, Inc., 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (same).

35. Thus, the Court should ensure that no clause in any of the Restrictive Documents for the Premises is an impediment to the Sale or the activities connected therewith. To the extent that such Anti-

Alienation Provisions exist in any Restrictive Documents, they should not be permitted to interfere with, or otherwise restrict the Debtors or the FF&E Agent from conducting a Sale.

**V. THE SALE SHOULD BE EXEMPT FROM CERTAIN FEDERAL, STATE, AND LOCAL LAWS, STATUTES, RULES AND ORDINANCES RELATED TO LIQUIDATION OR SIMILAR SALES.**

36. The states in which any Sale will or may take place may have certain requirements governing the conduct of liquidation or similar sales that may apply to Sale (the "Liquidation Sale Laws"). Typical statutes and regulations provide that if a liquidation or bankruptcy sale is court authorized, however, a company need not comply with these Liquidation Sale Laws. Moreover, pursuant to Bankruptcy Code section 105, the Court has the authority to permit a Sale to proceed notwithstanding contrary Liquidation Sale Laws. See 11 U.S.C. § 105.

37. The Debtors, therefore, request that, pursuant to Bankruptcy Code § 105(a), this Court authorize the Debtors to conduct Sale without the necessity of, and the delay associated with, complying with the Liquidation Sale Laws.

38. Because the Debtors and their assets are subject to this Court's jurisdiction, this Court will be able to supervise Sale and the liquidation of FF&E. The sale of the FF&E described herein is a legitimate method by which the Debtors can maximize the return from the sale of FF&E for the benefit of their estates and creditors. Moreover, creditors are adequately protected by the notice of this Motion and the jurisdiction and supervision of this Court. Accordingly, this Court should dispense with any requirement that the Debtors comply with technical requirements that are not intended to curtail persons from conducting sales with bankruptcy court supervision, including bulk sales laws.

39. Moreover, 28 U.S.C. § 959, which requires trustees (and, thus, debtors in possession) to otherwise comply with state and other laws in performance of their duties, does not apply to the Sale. Courts have held that 28 U.S.C. § 959 does not apply to debtors or their agents when they are liquidating assets. See, e.g., Cal. State Bd. of Equalization v. Goggin, 191 F.2d 726 (9th Cir. 1951) (holding that 28 U.S.C. § 959 does not apply to transactions that are in the nature of liquidation),

cert. denied, 342 U.S. 909 (1952); see also In re Borne Chem. Co., Inc., 54 B.R. 1260, 135 (Bankr. D.N.J. 1984) (holding that 28 U.S.C. § 959(b) is applicable only when property is being managed or operated for purpose of continuing operations).

40. Even if state or local law does not expressly except bankruptcy sales from its ambit, the Debtors submit, to the extent that such state or local law conflicts with federal bankruptcy laws, that such state or local law is preempted by the Supremacy Clause of the United States Constitution. To hold otherwise would severely impair the relief otherwise available under Bankruptcy Code section 363. In concert with this premise, bankruptcy courts have consistently recognized that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. See, e.g., In re Shenango Group, Inc., 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) ("Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code . . . . [A] state statute [] cannot place burdens on them where the result would contradict the priorities established by

the federal bankruptcy code." ). While preemption of state law is not always appropriate, as when the protection of public health and safety is involved, it is appropriate when, as here, the only state laws involved concern economic regulation. In re Baker & Drake, 35 F.3d 1348, 1353 (9th Cir. 1994) ("[F]ederal bankruptcy preemption is more likely . . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety." ).

41. Here, Bankruptcy Code section 363, which requires debtors to operate their businesses in a way that maximizes recoveries for creditors, will be severely undermined if the Court does not provide for the waiver of the Liquidation Sale Laws. Similar relief has been granted in other bankruptcy cases. See, e.g., In re FAO, Inc., Case No. 03-61826 (LK) (Bankr. D. Del.); In re Golf Am. Stores, Inc., Case No. 02-12313 (PJW) (Bankr. D. Del.); In re Bradlees, Inc., Case No. 00-16033 (BRL) (Bankr. S.D.N.Y.); In re Big V Stores, Case No. 00-4372 (PJW) (Bankr. D. Del.).

42. Importantly, given the supervision of this Court, the requested waiver will not unduly

undermine state and local requirements that would otherwise apply to the Sale. The Debtors only request that this Court authorize the Debtors and/or the FF&E Agent to conduct the Sale without the necessity of, and the delay associated with, obtaining various state licenses or permits, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising, or conducting a the Sale as a liquidation sale. The Debtors fully intend to be bound by and comply with remaining statutes and regulations governing health and safety laws.

43. The Debtors also request that no other person or entity, including (but not limited to) any lessor or federal, state, or local agency, department or governmental authority, be allowed to take any action to prevent, interfere with, or otherwise hinder consummation of the Sale, or the advertising and promotion (including through the posting of signs) of such Sale.

**VI. WAIVER OF THE TEN-DAY STAYS PROVIDED BY BANKRUPTCY RULES 6004 SHOULD BE WAIVED.**

44. Bankruptcy Rule 6004(h) provides that:  
"[a]n order authorizing the use, sale, or lease of property is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise."  
Fed. R. Bankr. P. 6004(h).

45. The Debtors request that the Court waive the ten-day stay of Bankruptcy Rules 6004 with respect to the sale of FF&E following entry of this the Order approving such transaction. By waiving such requirements, the Debtors and any purchaser will be able to immediately close the transactions, which will in turn save the Debtors continued accrual of administrative expenses and thereby benefit the Debtors' estates.

**NOTICE**

46. Notice of this Motion has been provided to those parties who have requested notice pursuant to Bankruptcy Rule 2002 and the Core Group (as defined in the Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local



Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (Docket No. 130; the "Case Management Order")), as well as (a) all entities known to have expressed an interest in a transaction regarding the FF&E; and (b) all federal, state, and local regulatory or taxing authorities that have a reasonably known interest in the relief requested by the Motion. The Debtors submit that, under the circumstances, no other or further notice need be given.

**WAIVER OF MEMORANDUM OF LAW**

47. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

**NO PRIOR REQUEST**

48. No previous request for the relief sought herein has been made to this Court or any other court.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an Order granting the relief requested herein, and such other and further relief as may be just and proper.

Dated: February 6, 2009

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IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION

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 In re: : Chapter 11  
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 CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
 et al., :  
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 Debtors. : Jointly Administered  
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**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105 AND 363  
 (I) AUTHORIZING DEBTORS TO ENTER INTO AN AGREEMENT IN  
 CONNECTION WITH SALE OF FURNITURE, FIXTURES AND  
 EQUIPMENT, SUBJECT TO HIGHER OR OTHERWISE BETTER  
 PROPOSALS; (II) APPROVING SALE OF FURNITURE, FIXTURES  
 AND EQUIPMENT FREE AND CLEAR OF ALL INTERESTS; AND  
 (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>1</sup> of the Debtors,  
 for entry of an order, under Bankruptcy Code

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

sections 105 and 363 and Bankruptcy Rule 6004

(I) Authorizing the Debtors to Enter Into An Agreement in Connection With Sale of Furniture, Fixtures and Equipment, Subject to Higher or Otherwise Better Proposals, (II) Approving Sale of Furniture, Fixtures and Equipment Free and Clear of All Interests, and (III) Granting Related Relief; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having conducted a hearing on the Motion on February 17, 2009; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Proposal and the FF&E Agreement, and the transaction contemplated thereby; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**<sup>2</sup>

A. The court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

B. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. Good and sufficient notice of the relief sought in the Motion has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to those parties that requested notice pursuant to Bankruptcy Rule 2002 and the Core Group (as defined in the Case Management Order), as well as (i) all entities known to have expressed an interest in a transaction regarding the FF&E; and (ii) all federal, state, and local regulatory or taxing authorities that have a reasonably known interest in the relief requested by the Motion.

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<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

D. The Debtors' proposed notice as set forth in the Motion, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

E. The Debtors have demonstrated a compelling and sound business justification for authorizing the sale of the FF&E under the circumstances, timing, and procedures set forth herein and in the Motion.

F. The process by which the Debtors and their professionals solicited bids from various national liquidation firms and other parties that specialize in liquidating FF&E and selected the highest or otherwise best proposal was fair and reasonable and in the best interests of the Debtors and their estates.

G. Entry into the FF&E Agreement constitutes the exercise by the Debtors of sound business judgment and such acts are in the best interests of the Debtors, their estates and creditors, and all other parties-in-interest.

H. The compensation of the FF&E Agent under the FF&E Agreement is fair and reasonable, and payment

of such fee is in the best interests of the Debtors, their estates and creditors, and all other parties-in-interest.

I. The entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties-in-interest herein; and it is therefor

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The relief requested in the Motion is GRANTED.

2. Pursuant to Bankruptcy Code sections 105(a) and 363(b), the Debtors are authorized to enter into the FF&E Agreement, provided that the terms of the FF&E Agreement are consistent with the Proposal, attached hereto as Exhibit A, the Motion and this Order. The Debtors are authorized to pay the fees due to and reimburse expenses actually paid by the FF&E Agent pursuant to the FF&E Agreement.

3. The Sale of the FF&E is hereby approved and authorized in all respects.

4. Pursuant to Bankruptcy Code sections 363(b) and 363(f), the sale of the FF&E shall be on an

"AS IS WHERE IS" basis free and clear of all interests, including liens, claims, and encumbrances ("Interests"), with all such Interests to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they had as against the FF&E immediately before such transfer, subject to any claims and defenses the Debtors may possess with respect thereto.

5. To the extent FF&E Agent is conducting the Sale in violation of any provision of any of the Debtors' leases, all of the Debtors' landlords are directed to accept this Order as binding authority authorizing the Debtors and the FF&E Agent to conduct the Sale at the Locations, including, without limitation, conducting and advertising of the Sale in accordance with the Proposal, the FF&E Agreement and this Order.

6. No approval, license or permits of any governmental authority shall be required to conduct the Sale.

7. If any parties or persons, including but not limited to landlords, subtenants, utility companies, governmental agencies, sheriffs, marshals or other



public officers, creditors and all those acting for or on their behalf, believe that cause exists to: (a) prohibit FF&E Agent from advertising the Sale, to the extent same is consistent with the Agency Agreement, (b) in any way interfere with or otherwise impede the conduct of the Sale at the Locations or the use or maintenance of the Debtors' assets of the Debtors located at the Locations, or (c) institute any action or proceeding in any court or other administrative body having as its objective the obtaining of an order or judgment against the Debtors, FF&E Agent or a landlord that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales and/or seek to recover damages for breach(es) of covenants or provisions in any lease or sublease based upon any relief authorized herein, this Court shall retain exclusive jurisdiction to resolve such dispute, and such parties or persons shall take no action against the Debtors, FF&E Agent, the landlord related the Sale until this Court has resolved such dispute. This Court shall hear the request of such persons or parties with respect to any such

disputes on an expedited basis, as may be appropriate under the circumstances.

8. The Sale at the Locations shall be conducted by the Debtors and FF&E Agent notwithstanding any restrictive provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Sale, the rejection of leases, abandonment of assets or "going dark" provisions; provided, however, that nothing in this Order shall impact any objection a landlord may have to assumption, assignment or rejection of their respective lease or to any proposed cure amount or rejection damages claim in association with such assumption, assignment or rejection.

9. The Debtors and/or the FF&E Agent (as the case may be), are authorized and empowered to transfer the FF&E among the Locations, notwithstanding anything in applicable non-bankruptcy law to the contrary.

10. No bulk sale or similar law shall prohibit the Debtors or the FF&E Agent from taking action contemplated by the Proposal or the FF&E Agreement.

11. Provided that the Sale is conducted in accordance with the terms of this Order, the Proposal, and the FF&E Agreement, the Debtors, their landlords and FF&E Agent are presumed to be in compliance with the requirements of any applicable liquidation sales, bulk sale laws or any other laws that purport to regulate, prohibit, restrict, or in any way limit FF&E Agent's use of (i) signwalkers; (ii) interior Location signage and banners; and (iii) exterior banners (each a "GOB Law," and together, the "GOB Laws"). To the extent there is a dispute arising from or relating to the Sale, this Order, the Proposal, or the FF&E Agreement (each a "Reserved Dispute"), which dispute relates to any GOB Law, this Court shall retain exclusive jurisdiction to hear and determine all such Reserved Disputes.

12. The Debtors are authorized to take any and all actions that are necessary or appropriate to consummate the transactions contemplated by this Order, all without further order of this Court.

13. This Order shall be effective immediately upon entry, and any stay of orders provided for in

Bankruptcy Rule 6004(h) and any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted.

14. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived.

15. This Court shall retain jurisdiction with respect to all matters arising or related to the implementation of this Order.

Dated: Richmond, Virginia  
February \_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Ian S. Fredericks, Esq.  
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- and -

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- and -

/s/ Douglas M. Foley  
Dion W. Hayes (VSB No. 34304)  
Douglas M. Foley (VSB No. 34364)  
MCGUIREWOODS LLP  
One James Center  
901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Counsel to the Debtors and Debtors in Possession

**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I  
hereby certify that the foregoing proposed order has  
been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley

**Exhibit A**

**(FF&E Proposal)**



# Liquid Asset Partners LLC

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Liquidations, Auctions & Negotiated Sales!

4700 - 36th St., Grand Rapids, MI 49512

616-719-5917 ph 616-719-5918 fax

February 5th, 2009

**VIA E-MAIL: Scott.Stegenga@fticonsulting.com**

**Mr. Scott Stegenga**

***Re: Revised: Circuit City's 7 Distribution Centers, 4 Service Centers, 2 Corporate Offices, 2 Xdocks, and 1 Call Center of Equipment***

Gentlemen:

Please accept this correspondence as the proposal of Liquid Asset Partners LLC with regard to the liquidation of the assets, including warehouse equipment, electronics and office equipment, in 7 DC's, 4 SVC's, 2 Corporate Offices, 2 X-docks, and 1 Call Center located throughout the country (the "Facilities"). We greatly appreciate this proposal opportunity and sincerely hope we will be able to provide these services on your behalf.

## **Introduction**

As you may be aware, Liquid Asset Partners LLC is a nationwide liquidation and consulting firm, comprised of professionals with a diverse knowledge of industries. During the past 5 years, the team from Liquid Asset Partners has consulted on or purchased equipment assets (similar to this project) for liquidation which exceeded one hundred million dollars in sales. Some of these transactions include Penn Traffic's 2 Distribution Centers in Columbus (1million Sq Ft.), Kmart's World Corporate Office(1mm Sq Ft.) & Warehouse in Detroit, 33 Office Max DC's, Bugle Boys 600,000 sq ft DC in Atlanta, Amazing Savings DC in NJ, Franks Nursery DC in Indianapolis, 300+ Builders Square Warehouse Stores (120,000 sq ft each), Over 10,000 retail stores of Fixtures & Equipment, and numerous other Corporate Offices & Distribution Centers.

Competitors may paint a blue sky picture of "potential" sale recovery. Is this "potential" recovery realistic from competitors who may be stretched thin in the current GOB environment? Although this project does hold potential for a significant upside, we base our estimates on realistic numbers. We strive to give you a conservative estimate and currently have our experienced team of Warehouse & Equipment liquidation specialists fully available to devote the proper attention to maximize this project return and upside for Circuit City.

### **Approach**

We strive to put together a project that provides Circuit City the cooperation, flexibility, and attention to detail required to maximize the sale of assets in the changing time frames discussed. We are prepared to deploy our team of veteran liquidators, each experienced in the liquidation of warehouse and office equipment, to each site to ensure a safe & successful sale. To maximize the net return we will utilize a comprehensive, tireless and complete marketing effort, bringing a "no stone unturned" mentality to the approach and scope of the project. We use a multitude of media and advertising channels to insure the proper exposure to the sale and to the project overall, while always protecting the integrity and reputation of the transaction at hand. Our marketing strategies generally include: local, regional and international newspaper insertions, nationwide internet announcement, trade listings, web and Internet notifications, email notices, and direct telephone solicitations. Our list of direct buyers for Warehouse & Distribution Center equipment encompasses 1,000+ warehouse equipment dealers, 300+ Conveyor/Automation dealers, and 15,000+ equipment end users.

We would handle all aspects of the transaction from concept through execution, including preparing and placing all advertising and marketing materials, overseeing personnel and operational efforts, onsite liquidation execution and support services, property removal and building clean-up supervision, and providing detailed financial accounting and support documentation. Our services generally also include securing and identifying all assets for sale, preparing the liquidation materials, and providing all other related and/or necessary services. Finally, we carry insurance and will require that our purchasers provide proof of insurance before removing any assets from the Facilities.

### **Compensation Structure**

We propose two similar compensation structures. First we propose a scenario under which our compensation would be equal to nine per cent (9%) of the net proceeds of the sale and any buyers premium collected would be included in the gross sale totals. Second we propose a commission structure under which our compensation would be equal to two per cent (2%) of the net proceeds of the sale. Under this second scenario, we would also charge buyers a customary buyer's premium (generally equal to ten per cent (10%)). Any such buyer's premium collected would be retained by us and not be treated as part of the gross proceeds from the sale subject to the commission set forth above.

Under either commission scenario, we would deduct for direct sale related expenses up to the amounts noted below from the sale proceeds. Circuit City would not be required to pay these sale expenses up front. These expenses would include expenses for marketing and advertising, accounting, labor and personnel (including supervisors), travel, and related expenses. As noted above, all occupancy and related costs (i.e., rents, mortgages, property insurance, utilities, phone, trash, security, etc.) would remain your responsibility for the duration of the sale period.

### **Costs Per Location**

- 2 Week Service Center Liquidation: up to \$9,500 per location
- 2 Week Distribution Center Liquidation: up to \$19,500 per location
- 2 Week Office Complex Liquidation: up to \$19,500 per location
- 6 Week Distribution Center Liquidation: up to \$44,500 per location
- 6 Week Office Complex Liquidation: up to \$35,500 per location



Under this scenario, assuming a start date no later than two weeks from today, we would require unrestricted access to the Facilities. We are prepared to meet your requirements for any facilities that need a 2 week sale, but we feel to maximize the return to Circuit City on this project a 6-8 week time frame would be ideal for certain DC's or Office Complex's. We understand some facilities are leased and therefore, would require consent from the court or landlord of each Facility to the sale process. Finally, the proposal is subject to the execution of a definitive agreement reasonably acceptable to the parties.

### **Conclusion**

We believe that these assets will make for a terrific sale and are extremely excited about the prospects of this event. No matter what value may exist within the Facilities, we believe that our sale methods and strategies will extract the highest recovery within the time frame allowed. We can promise that no company or individuals will work with more vigor, attention, and diligence to assure the success of this sale. We pride ourselves in our service philosophy and would welcome the opportunity to provide services on your behalf.

Please let me, or any other member of our group, know if you have any further questions, issues, or concerns. Thank you again for your time and continued consideration in this matter. I look forward to hearing from you.

Sincerely,  
*Bill Melvin Jr.*  
Bill Melvin Jr.  
CEO

CC: Bill Melvin Sr.  
Chairman

**Exhibit B**

**(List of Locations)**

List of Locations					
Location Number	Location Name	Address	City	State	Zip
755	Marion DC	1100 Circuit City Rd	Marion	IL	62959
353	Industry DC	680 S Lemon Ave	Walnut	CA	91789
567	Ardmore DC	1901 Cooper Dr	Ardmore	OK	73401
775	Orlando DC	19925 Independence Blvd	Groveland	FL	34736
255	Bethlehem DC	4000 Township Line Rd	Bethlehem	PA	18020
344	Livermore DC	400 Longfellow Court	Livermore	CA	94550
335	Mid-Atlantic DC	14301 Mattawoman Dr	Brandywine	MD	20613
73	Atlanta Svc Ctr	1323 West Corporate Court	Lithia Springs	GA	30122
34	Dallas Svc Ctr	3738 Duncanville Rd	Dallas	TX	75236
45	Philadelphia Svc Ctr	400 Crossing Drive	Bristol	PA	19007
754	Kearny Xdock	136 Paris St #158	Newark	NJ	07105
325	Boston Xdock 750	165 Grove St	Franklin	MA	2038
754	Kearny Xdock	136 Paris St #158	Newark	NJ	07105
325	Boston Xdock 750	165 Grove St	Franklin	MA	02038
	Corporate Headquarters	9950 Mayland Dr	Richmond	VA	23233